

ORIGINAL

FILED

April 9 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0048

STATE OF MONTANA,

Plaintiff and Appellee,

v.

NICOLE GUILL,

Defendant and Appellant.

FILED

APR 09 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**MOTION TO REMAND TO DISTRICT COURT
AND TO STAY APPEAL**

Comes now, Koan Mercer, appellate counsel for Nicole Guill (Guill) and moves the Court to remand the above entitled case to the Twentieth Judicial District Court, Sanders County, for the purpose of modifying the written Judgment pursuant to MCA § 46-18-116(2) to conform to the oral pronouncement of sentence. Trial counsel for Guill has filed a motion in district court to conform the written judgment to the oral pronouncement under the title Defendant's Objection(s) to Written Judgment. (Ex. A.) This motion was filed within the 120 days mandated by Mont. Code Ann. § 46-18-116(2) and is now pending before the district court.

The State has also filed a motion in the district court for an evidentiary hearing as to Guill's ability to pay restitution and public defender costs and has requested the district court prevent Guill from accessing approximately \$9,000

currently in Guill's prison account. (Ex. B.) Pursuant to the State's request, the district court issued an order staying disbursement of these funds and has set a hearing regarding these matters for May 5, 2009. (Ex. C.) The State has moved the district court to order that Guill be transported from the Women's Prison to Sanders County for this hearing. (Ex. D.)

Although the parties may disagree regarding the merits of these respective motions in district court, procedurally Guill and the State are in agreement that this appeal be stayed and that jurisdiction in this case be remanded to the district court for resolution of these matters. Guill requests this Court to order the district court to transfer the record to this Court within ten days after the scheduled May 5, 2009 hearing and to set Guill's opening appeal brief as due thirty days after this Court's receipt of the record. It is appellate counsel's understanding that the court file in this case has not yet been transferred to this Court and is presently still with the district court.

Respectfully submitted this 9th day of April, 2009.

OFFICE OF THE STATE PUBLIC DEFENDER
Appellate Defender Office
301 South Park, Room 568
P.O. Box 200145
Helena, MT 59620-0145

By: _____


KOAN MERCER

Assistant Appellate Defender

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
Motion to Remand to District Court and to Stay Appeal to be mailed to:

STEVE BULLOCK
Montana Attorney General
MARK MATTIOLI
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

COLEEN MAGERA
Sanders County Attorney
P.O. Box 519
Thompson Falls, MT 59873-0519

NICOLE GUILL 3000065
Montana Women's Prison
701 South 27th Street
Billings, MT 59101

DATED: _____

4-9-2009

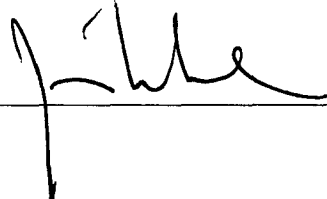
A handwritten signature in black ink, appearing to be 'J. H. Lee', written over a horizontal line.

EXHIBIT A

1 Noel K. Larrivee
2 **Office of the State Public Defender**
3 110 Main Street
4 P.O. Box 1150
5 Polson, Montana 59860
6 Telephone: (406)883-6080
7 FAX: (406) 883-6089

8 Attorney for Defendant Nicole Guill

9 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

10 **STATE OF MONTANA,**

Cause No. DC-06-55

11 Plaintiff,

12 vs.

DEFENDANT'S OBJECTION(S)
TO WRITTEN JUDGMENT

13 **NICOLE GUILL,**

14 Defendant.

15 COMES NOW the Defendant Nicole Guill, by and through her attorney Noel K. Larrivee,
16 and hereby objects to the written judgment entered in the above-entitled cause on the grounds
17 that the written judgment does not conform to the oral judgment stated September 16, 2008.
18 The written judgment was filed November 25, 2008. The written judgment does not conform to
19 the Court's ruling(s) and pronouncement of sentence, beginning with item numbered 11 on page
20 6 of the Judgment, and continuing through item numbered 44 on page 11 of the Judgment.

21 Specifically, the Defendant asserts the following errors:

22 1. On page 3 of the Judgment, starting at line 18, the whole portion regarding "no contact
23 with Douglas Guill." This issue is also the subject of grounds raised on appeal.

24 2. Page 6, condition no. 11. Supervision fees. Also, conditions 14, 15, 17, 18, 19, 20,
25 21, and 22. The judgment does not contain the court's statement that the defendant is reserved
26 the right to challenge the imposition of any fines, fees, or recoupment of attorney costs. See page
27 11 of the transcript, part 1, lines 6 - 8, and lines 15 - 19.

28 3. The judgment likewise does not include the judge's statement that the Court will not

**DEFENDANT'S OBJECTIONS TO
WRITTEN JUDGMENT - 1**

(State of Montana v. Nicole Guill)

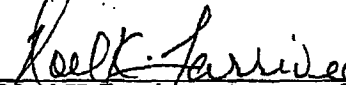
1 12. Judgment, page 8, condition no. 24. The oral sentence does not state anywhere that
2 the Defendant must pay a fine. Further, the oral sentence does not state anywhere that the
3 Defendant shall NOT be given credit against the fine for time served in jail.

4 In summary, there are multiple instances where the written judgment contains provisions
5 not imposed at time of sentencing, and conversely, provisions that were stated at the oral
6 pronouncement of the sentence not included in the written judgment. Defendant has attempted to
7 identify all possible issues. Defendant reserves the right to present additional errors at time of
8 hearing, or on appeal.

9 A copy of the transcript of the Court's rulings on the conditions of probation is attached
10 hereto as part 1 of the transcript, and the sentence imposed as part 2 of the transcript. Both parts
11 of the transcript are incorporated by reference herein.

12 DATED this 23rd day of March, 2009.

13 *Office of the State Public Defender*

14 
15 Noel K. Larrivee, Attorney for Defendant

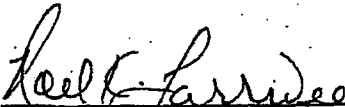
16 **CERTIFICATE OF SERVICE**

17 I HEREBY CERTIFY that on the 23rd day of March, 2009, a true and correct copy of the
18 foregoing Defendant's Objection to the Written Judgment was mailed, postage paid, to the
19 following counsel:

20 Coleen Magera
21 Sanders County Attorney
22 P.O. Box 519
Thompson Falls, MT 59873

23 Daniel Guzynski
24 Special Deputy Sanders County Attorney
P.O. Box 201401
Helena, MT 59620-1401

25 Michael J. Sherwood
26 MICHAEL J. SHERWOOD, P.C.
27 401 N. Washington
28 P.O. Box 8358
Missoula, Montana 59807


Noel K. Larrivee

DEFENDANT'S OBJECTIONS TO
WRITTEN JUDGMENT - 3

(State of Montana v. Nicole Guill)

1 COLEEN I. MAGERA
Sanders County Attorney
2 Sanders County Courthouse
P.O. Box 519
3 Thompson Falls, MT 59873-0519
Telephone: (406) 827-6903

4 DANIEL GUZYNSKI
5 Assistant Attorney General
Special Deputy Sanders County Attorney
6 P.O. Box 201401
Helena, MT 59620-1401
7 Telephone: (406) 444-2026

8 COUNSEL FOR STATE

Apr. 6 20 09
Shirley F. Rummel
COUNTY CLERK OF COURT
Carrie Holden
DEPUTY

9 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

10 STATE OF MONTANA,

Cause No. DC-06-55

11 Plaintiff,

12 v.

13 NICOLE C. GUILL,

14 Defendant.

**MOTION TO SET HEARING
AND SUSPEND DISBURSEMENT
OF NICOLE GUILL'S FUNDS
AT MONTANA STATE WOMEN'S
PRISON**

15 INTRODUCTION

16 Coleen Magera, Sanders County Attorney, moves the Court for order setting an
17 evidentiary hearing regarding restitution owed by the Defendant and Defendant's ability to
18 pay restitution and cost of public defender.

19 The State further requests an order directing the Montana State Women's Prison to
20 suspend disbursement of funds held by the Montana State Women's Prison on behalf of
21 Nicole Guill.

22 MOTION TO SET HEARING

23 A sentencing hearing was held on September 16, 2008. At the conclusion of the
24 hearing the Court ordered that all of the conditions set forth in the Pre-Sentence report, with a
25 few delineated exceptions be made part of the judgment, which would have included the
26 condition that the Defendant pays \$7,249.43 in restitution to the Montana Crime Victim's
27 Compensation Fund. (See Attached Tr. of Sentencing Hr'g at 30:15-20). The Judgment

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1 signed by the Court on November 5, 2008, paragraph 15, includes this restitution provision.
2 However, during the sentencing hearing the Defendant requested in general that the issue of
3 restitution be left open and that the Defendant be allowed to file at a later time an objection to
4 the Court's issuance of restitution. (See Attached Tr. of Sentencing Hr'g at 10, 11).

5 On March 20, 2009, the Defendant filed with the Court Defendant's Objections to
6 Written Judgment stating in part that the Defendant objects to the portion of the Judgment
7 that ordered restitution because no hearing was held regarding the Defendant's ability to pay,
8 and that no financial statement regarding the restitution amount of \$7,249.43 was ever
9 provided to the Defendant.

10 Furthermore, on October 21, 2008, the Court issued an order directing the Defendant
11 to reimburse the Office of the State Public Defender in the amount of \$27,146 for the
12 services of a public defender. Prior to the issuance of this order, the Defendant objected to an
13 order directing her to pay the cost of a public defender for the reason that no hearing was held
14 to determine the Defendant's ability to pay. (See Def.'s Obj. to Reimb. of Cost, dated
15 October 20, 2008).

16 The Defendant appears to be requesting a hearing regarding the Defendant's ability to
17 pay restitution and reimbursement of the State for the services of a public defender.

18 Accordingly, the State respectfully requests that the Court hold a hearing in this matter
19 for the purpose of determining the Defendant's ability to pay.

20 **MOTION FOR ORDER SUSPENDING DEFENDANT'S FUNDS**

21 The State has been advised that the Defendant has within her financial account at the
22 Montana State Women's Prison approximately \$9,000. Douglas Guill, who is incarcerated
23 at the Montana State Prison, also has approximately \$9,000 within his account. The State
24 understands that these monies have been deposited at these institutions by
25 Richard Christensen.

26 It is the State's position that the money in the Defendant's account should be used to
27 pay restitution or for reimbursement of public defender fees.

1 Accordingly, the State respectfully requests that the Court immediately issue an order
2 directing the Montana State Women's Prison to immediately suspend disbursing any of the
3 money held by the Montana State Women's Prison, on behalf of the Defendant, except for
4 \$100, until such time as the Court can hold a hearing in this matter.

5 The State is concerned that once receiving this motion the Defendant will immediately
6 transfer the funds out of her account to another individual making them unavailable.
7 Therefore, the State is requesting that the Court immediately issue an order suspending
8 disbursement of these funds without waiting for a response by the Defendant.

9 Dated this 6th day of April, 2009.

10
11 
12 COLEEN MAGERA
13 Sanders County Attorney

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that I caused a true and correct copy of the foregoing State's Motion to
16 Set Hearing and Suspend Disbursement of Nicole Guill's Funds at Montana State Women's
17 Prison, to be mailed, first class postage prepaid, to:

18 Mr. Noel Larrivee
19 Attorney at Law
20 P.O. Box 1150
21 Polson, MT 59860-1150

22 Mr. Daniel Guzynski
23 Assistant Attorney General
24 P.O. Box 201401
25 Helena, MT 59620-1401

26 The Honorable Deborah Kim Christopher
27 District Court Judge
Lake County Courthouse
106 Fourth Avenue
Polson, MT 59860

Dated: Apr. 6, 2009 

1 city of the victim's residence.

2 The reasons for the sentence are that it does
3 provide punishment to the defendant, it provides for the
4 protection of the community, the protection of the victim,
5 an opportunity for the defendant's rehabilitation.

6 As the Court indicated, this is one of the more
7 difficult cases I've ever sat on because of the
8 impressionability and the susceptibility to outside
9 validation and vulnerability, as testified to by Dr. Page,
10 the concerns of the Court's apparent conflict between who
11 the defendant was before she was involved with Douglas
12 Guill and who she became afterwards and the pathological
13 difference that holds the tremendous danger to herself and
14 to the victim and to the community.

15 The conditions as the Court had indicated with
16 regard to probation and parole as modified by the Court in
17 the earlier testimony that are found on pages 11, 12, 13,
18 14 and 15, paragraphs one through and including 48 as
19 they've been modified are incorporated as conditions of
20 the suspended portion of the sentence.

21 The Court would add the further recommendation .
22 to the Department of Corrections that in the event that
23 the defendant is able to successfully complete the
24 treatment and in the event that the Department of
25 Corrections is satisfied that based on that treatment the

1 MR. GUZYNSKI: No.

2 THE COURT: Child support's not an issue, so the
3 Court is striking the reference to child support in
4 condition number seven.

5 I think the Court has to address conditions
6 essentially 11, 14, 15, 17, 18, 19, 20, 21 and 22 with
7 regard to the appointment of counsel in this case. The
8 difficulty for the Court is that I have in fact imposed
9 the Office of the Public Defender on the defendant, not
10 from the issue in this matter with regard to indigency.
11 So I'm not really aware of an indigency determination in
12 this matter. In fact, the Court imposed the Office of the
13 Public Defender due to the apparent conflict that was
14 present with regard to the same attorney representing both
15 the defendant and her husband, on top of that the Court's
16 concern about the way the defendant appeared to view her
17 presence in this case. And because of that the Court
18 imposed counsel on her.

19 So I don't have and cannot make the same
20 findings with regard to assuming that she's indigent for
21 purposes of those conditions. What the Court will require
22 in this case and reserve to the defendant is, I am going
23 to require that the defense counsel provide the amount of
24 hours that he has worked on this case and the costs that
25 have been incurred in this case. I am going to order that

1 the probation officer then review that information in the
2 event that the defendant is not incarcerated during the
3 entire time of her sentence and come up with their
4 recommendation for a payment schedule or how those things
5 are to be paid.

6 And I am further going to reserve to the
7 defendant the right to challenge that recommendation in
8 the event that we ever get to that point. Because the
9 Court will not revoke a sentence if someone is financially
10 unable to accomplish those requirements. By the same
11 token, given some of the circumstances in the case, the
12 Court's unable, based on the information I have right now,
13 to make a determination as to the defendant's ability to
14 pay.

15 So if you want to argue about that, the State's
16 going to propose their position. The defendant is
17 reserved the right to challenge that and we can have a
18 hearing at the point that that becomes an issue when and
19 if it does.

20 MR. LARRIVEE: And will the Court take notice,
21 then, that I did file that report to the Court today?

22 THE COURT: And I appreciate you doing so.

23 MR. LARRIVEE: And copies to both Mr. Guzynski
24 and Ms. Magera.

25 THE COURT: The only remaining issue would be

EXHIBIT C

Apr. 6 09
Dianne F. Rummel
COUNTY CLERK OF COURT
DEPUTY
Carol Holden

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

STATE OF MONTANA,	}	Cause No. DC-06-55
Plaintiff,		
v.		ORDER SETTING HEARING AND SUSPENDING DISBURSEMENT OF FUNDS
NICOLE C. GUILL,		
Defendant.		

The State having moved the Court for an order setting a hearing regarding the Defendant's ability to pay restitution and suspend disbursement of Defendant's funds and good cause appearing,

IT IS HEREBY ORDERED that the Court will hold a hearing on the 5th day of May, 2009, at 10:00 (a.m./p.m.), regarding the Defendant's ability to pay the financial obligations previously ordered by the Court in this matter.

Furthermore, the Montana State Women's Prison shall ~~suspend~~ ^{stay} the disbursement of any funds held by the Montana State Women's Prison on behalf of the Defendant, Nicole Guill, until further order by the Court.

Dated this 6th day of April, 2009. *Defendant shall have opportunity to respond & object.*

Copies to: County Atty
: Larrivue
DO
04/08/09

Deborah Ann Christopherson
DISTRICT JUDGE

213

EXHIBIT D

1 COLEEN I. MAGERA
Sanders County Attorney
2 PO Box 519
Thompson Falls, MT 59873
3 Telephone:(406) 827-6903

4 DANIEL GUZYNSKI
Assistant Attorney General
5 Special Deputy Sanders County Attorney
PO Box 201401
6 Helena, MT 59620-1401
Telephone: (406)444-2026

7 COUNSEL FOR STATE
8

FILED 04/08 2009
Dianne F. Rummel
COUNTY CLERK OF COURT
BY [Signature] DEPUTY

9
10 MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

11 STATE OF MONTANA,

12 Plaintiff,

13 vs.

14 NICOLE C. GUILL,

15 Defendant.

Cause No: DC-06-55

MOTION TO TRANSPORT
THE DEFENDANT

16 A hearing has been set to be held on May 5, 2009 at the Sanders County Courthouse in
17 Thompson Falls, Montana. The Defendant, Nicole Guill is currently an inmate of the Montana State
18 Women's Prison and is required to be present at the above-mentioned hearing. The State requests
19 that the Court issue an order directing the Yellowstone County Sheriff's Office to transport Nicole
20 Guill from the Montana State Women's Prison to the Sanders County Detention Center in
21 Thompson Falls, Montana where he will be detained until such time as his testimony is no longer
22 needed, at which time the Sanders County Sheriff's Office shall transport Nicole Guill to the
Montana State Women's Prison.

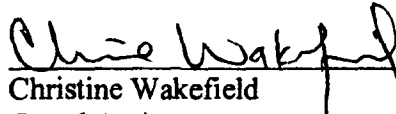
23 DATED this 8th day of April, 2009.

24 Coleen I. Magera
25 Coleen I. Magera
Sanders County Attorney

CERTIFICATE OF MAILING

I, Christine Wakefield, Legal Assistant to the Sanders County Attorney, hereby certify that a copy of the foregoing was served upon the following by mailing a true and correct copy thereof on the 5th day of April, 2009, as follows:

Noel Larrivee
Attorney at Law
PO Box 1150
Polson, MT 59860


Christine Wakefield
Legal Assistant